

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

JIMMY L. SMITH,)	
)	
Petitioner,)	
)	
v.)	Case No. 3:06-0105
)	Judge Echols
)	
TOMMY MILLS, WARDEN,)	
)	
Respondent.)	

ORDER

This matter is before the Court on a Report and Recommendation ("R & R") (Docket Entry No. 10) in which the Magistrate Judge recommends granting the Defendant's unopposed Motion to Dismiss (Docket Entry No. 6) on the grounds that Petitioner's habeas petition was filed many years after the one year statute of limitations had run and there are no grounds for tolling the statute of limitations. The R & R was issued on May 11, 2006, and Plaintiff has filed no objections thereto, even though he was informed in the R & R that any objections needed to be filed within ten (10) days (Docket Entry No. 10 at 7-8).

Upon review of an R & R, the Court "shall make a *de novo* determination of the matter and may conduct a new hearing, take additional evidence, recall witnesses, recommit the matter to the Magistrate Judge for further proceedings and consideration, conduct conferences with counsel for the affected parties, and receive additional arguments, either oral or written, as the District Judge may desire." L.R.M.J. 9(b)(3). See, Fed.R.Civ.P. 72(b).

This Court has thoroughly reviewed the Petition for Writ of Habeas Corpus (Docket Entry No. 1) and the Respondent's Motion to Dismiss. The Court finds that the Magistrate Judge employed the proper legal analysis in ruling on the limitations issue and that dismissal of this action is appropriate.

Accordingly, the Court rules as follows:

(1) The Report and Recommendation (Docket Entry No. 10) is hereby ACCEPTED;

(2) Respondent's Motion to Dismiss (Docket Entry No. 6) is hereby GRANTED; and

(3) This case is hereby DISMISSED WITH PREJUDICE.

Entry of this Order on the docket shall constitute entry of a final judgment in accordance with Federal Rules of Civil Procedure 58 and 79(a).

It is so ORDERED.


ROBERT L. ECHOLS
UNITED STATES DISTRICT JUDGE